1990

Truck Insurance Exchange v. Motor Cargo : Reply to Brief in Opposition

Utah Supreme Court

BRIEF

IN THE SUPREME COURT OF UTAH

TRUCK INSURANCE EXCHANGE, a corporation, Plaintiff/Respondent, v. MOTOR CARGO, a Utah corporation, Defendant/Petitioner.	CASE NO. 900437

REPLY BRIEF OF PETITIONER MOTOR CARGO

On Review from the Decision of the
Utah Court of Appeals

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Defendant/Petitioner, Motor Cargo ("Motor Cargo"), by and through its counsel of record, hereby submits its brief responding to the brief of Plaintiff/Respondent, Truck Insurance Exchange ("TIE"), opposing Motor Cargo's Petition for Writ of Certiorari ("opposition brief").

ARGUMENT

In its opposition brief, TIE misstates that Motor Cargo's alleged failure to challenge the sufficiency of the evidence below supporting the trial court's interpretation of Retrospective Premium Determination Agreement - Plan III ("Retro Agreement") waived its right to challenge such evidence on appeal. In addition, TIE mischaracterizes the Affidavit of William K. Maxwell submitted to the trial court as evidence of Motor Cargo's reasonable interpretation of the Retro Agreement in

the event of early cancellation by Motor Cargo. Motor Cargo therefore submits this reply brief to clarify the above issues.

I. MOTOR CARGO HAS NOT WAIVED ITS RIGHT TO CHALLENGE ON APPEAL THE SUFFICIENCY OF THE EVIDENCE SUPPORTING THE TRIAL COURT'S JUDGMENT

Contrary to TIE's contention in its opposition brief, a party need not object below to a trial judge's findings of fact in order to preserve challenging the sufficiency of the evidence supporting such findings. Indeed, this Court has held:

> An objection to findings of fact and conclusions of law may be made in the form of a motion for a new trial or amendment of judgment, procedures governed by Rule 52(b) and 59 of the Utah Rules of Civil Procedure. 'It is settled that . . . a Rule 59 motion is [not] a condition precedent to appeal from final judgment.' The Nature Conservancy v. Nakila, 4 Hawaii App. 584, 671 P.2d 1025 (1983); Kahn v. Weldin, 60 Or. App. 365, 653 P.2d 1268 (1982); Alaska Airlines, Inc. v. Sweat, 568 P.2d 916 (Alaska 1977).

Dugan v. Jones, 724 P.2d 955, 956 (Utah 1986). In Dugan, this Court further observed:

> A motion for a new trial is not a prerequisite for an appeal from a judgment; and on such appeal review may be had of any legal error, properly raised, that appears in the record, whether the action be a jury or a court action. And in the latter action the scope of review also embraces the facts, but the trial court's findings of fact are not to be set aside by the appellate court unless clearly erroneous.

Id. (quoting 6A J. Moore, Federal Practice § 59.15[3] (2d ed. 1986)).

The above case precedent plainly establishes that Motor Cargo is entitled to challenge on appeal the sufficiency of the evidence supporting the trial court's conclusion that Retro Agreement B was clear and unambiguous. TIE's contention here to the contrary is therefore erroneous and should be rejected.[1]

II. THE AFFIDAVIT OF WILLIAM K. MAXWELL SUPPORTS A REASONABLE INTERPRETATION OF THE RETRO AGREEMENT IN THE EVENT OF EARLY CANCELLATION

TIE points to the fact that the Affidavit of William K. Maxwell "relates to Maxwell's opinion regarding his interpretation of the Retro Agreement reached after the agreement was signed and does not purport to relate to Motor Cargo's contractual intent." Opposition Brief, p. 12. TIE's observation here is a "red herring". Motor Cargo has contended throughout this appeal that TIE never explained to Motor Cargo as to how it would lose "the benefits of retrospective rating" in the event of early cancellation. Indeed, there is no such evidence in the record.

Therefore, in the absence of such evidence, the admissible portions of the Maxwell Affidavit provide a basis for Harold Tate's reasonable interpretation of the Retro Agreement

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[1] TIE's reliance on Fitzgerald v. Corbett, 793 P.2d 356 (Utah 1989) is misplaced. Fitzgerald involved a challenge on appeal that the trial court had committed reversible error when it omitted a conclusion of law that a disputed contract clause was ambiguous. Motor Cargo makes no such challenge in its appeal. Fitzgerald therefore provides no support for TIE's contention.

when he decided to exercise Motor Cargo's right of cancellation. Indeed, the trial court and Court of Appeals reviewed Maxwell's Affidavit, among other extrinsic evidence, and erred in concluding that the Retro Agreement was clear and unambiguous, thereby cutting off Motor Cargo's right to an excess premium refund in the event of early cancellation.

CONCLUSION

For all the reasons discussed above and in its Petition for Writ of Certiorari, Motor Cargo respectfully requests that this Court grant its petition.

DATED this 5th day of November, 1990.

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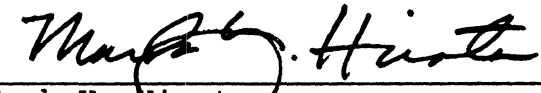
By 
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CERTIFICATE OF SERVICE

On this 5th day of November, 1990, four copies of the foregoing Reply Brief of Petitioner Motor Cargo were sent by first-class mail with postage thereon fully prepaid to:

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